

Treasury Board

Gouvernement du Québec

T.B. 228300, 24 April 2023

Act respecting contracting by public bodies
(chapter C-65.1)

Act mainly to promote Québec-sourced and responsible procurement by public bodies, to reinforce the integrity regime of enterprises and to increase the powers of the Autorité des marchés publics (2022, chapter 18)

Certain conditions governing the application of Chapter V.1 of the Act respecting contracting by public bodies with respect to the integrity of enterprises

Regulation respecting certain conditions governing the application of Chapter V.1 of the Act respecting contracting by public bodies with respect to the integrity of enterprises

WHEREAS the Act mainly to promote Québec-sourced and responsible procurement by public bodies, to reinforce the integrity regime of enterprises and to increase the powers of the Autorité des marchés publics (2022, chapter 18) has amended the integrity regime provided for in Chapter V.1 of the Act respecting contracting by public bodies (chapter C-65.1);

WHEREAS, under the second paragraph of section 21.23 of the Act respecting contracting by public bodies, and the third paragraphs of sections 21.5.1 and 21.41 of the Act respecting contracting by public bodies, made respectively by sections 10 and 36 of the Act mainly to promote Québec-sourced and responsible procurement by public bodies, to reinforce the integrity regime of enterprises and to increase the powers of the Autorité des marchés publics, the Authority determines the information and documents that must be filed with an application for authorization to contract, an application for renewal and an application for an examination of integrity;

WHEREAS, under section 21.40 of the Act respecting contracting by public bodies, made by section 35 of the Act mainly to promote Québec-sourced and responsible procurement by public bodies, to reinforce the integrity regime of enterprises and to increase the powers of the Autorité des marchés publics, the Authority determines the information and documents that an enterprise holding

an authorization must annually update, as well as any terms or conditions relating to such communication of documents and information. The same applies to the terms and conditions for communicating documents and information in support of a periodic update;

WHEREAS, under section 21.8 of the Act respecting contracting by public bodies, the Authority determines the cases, conditions and manner relating to the communication, by the public bodies referred to in Schedule II of that Act, of the information that must be entered in the register of ineligible enterprises;

WHEREAS, under the second paragraph of section 21.45 of the Act respecting contracting by public bodies, made by section 42 of the Act mainly to promote Québec-sourced and responsible procurement by public bodies, to reinforce the integrity regime of enterprises and to increase the powers of the Autorité des marchés publics, the Authority determines the information that must be entered in the register of authorized enterprises;

WHEREAS, under section 21.48.17 of the Act respecting contracting by public bodies, as renumbered by section 39 of the Act mainly to promote Québec-sourced and responsible procurement by public bodies, to reinforce the integrity regime of enterprises and to increase the powers of the Autorité des marchés publics, a regulation of the Autorité des marchés publics under the Act respecting contracting by public bodies must be submitted for approval to the Conseil du trésor, which may approve it with or without amendment;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), the Regulation respecting certain conditions governing the application of Chapter V.1 of the Act respecting contracting by public bodies with respect to the integrity of enterprises was published as a draft in Part 2 of the *Gazette officielle du Québec* of 8 February 2023 with a notice that it could be approved by the Conseil du trésor on the expiry of 45 days following that publication;

WHEREAS, on 12 April 2023, the Autorité des marchés publics made the Regulation respecting certain conditions governing the application of Chapter V.1 of the Act respecting contracting by public bodies with respect to the integrity of enterprises by Decision n° 2023-PDG-010;

WHEREAS it is expedient to approve the Regulation with amendments;

THE CONSEIL DU TRÉSOR DECIDES:

THAT the Regulation respecting certain conditions governing the application of Chapter V.1 of the Act respecting contracting by public bodies with respect to the integrity of enterprises, attached to this Decision, be approved.

Le greffier du Conseil du trésor,
LOUIS TREMBLAY

Regulation respecting certain conditions governing the application of Chapter V.1 of the Act respecting contracting by public bodies with respect to the integrity of enterprises

Act respecting contracting by public bodies
(chapter C-65.1, s. 21.5.1, 3rd par., s. 21.8, s. 21.23,
2nd par., s. 21.40, s. 21.41, 3rd par. and s. 21.45, 2nd par.)

Act mainly to promote Québec-sourced and responsible procurement by public bodies, to reinforce the integrity regime of enterprises and to increase the powers of the Autorité des marchés publics
(2022, chapter 18, ss. 10, 14, 22, 35, 36 and 42)

CHAPTER I AUTHORIZATION TO CONTRACT

DIVISION I SCOPE

1. This Chapter applies to all enterprises that wish to obtain or that hold the authorization to contract referred to in Division III of Chapter V.1 of the Act respecting contracting by public bodies (chapter C-65.1).

DIVISION II APPLICATION FOR AUTHORIZATION

2. The respondent of the enterprise must file an application for authorization electronically using the form provided by the Autorité des marchés publics.

The application must contain

- (1) the name of the enterprise and its Québec business number assigned by the enterprise registrar, if applicable;
- (2) the address and telephone number of the head office of the enterprise and of each of its establishments in the past 5 years;

(3) the name and mailing address of the respondent and the respondent's functions within the enterprise;

(4) the name, date of birth, if applicable, domiciliary address and telephone number of the natural person who operates a sole proprietorship, as the case may be, of the officers of the enterprise, its directors or partners, its shareholders, along with the percentage of the voting rights attached to the shares held by them, as well as of any person or enterprise that has direct or indirect legal or de facto control over the enterprise;

(5) a declaration by the enterprise and the persons referred to in sections 21.26 and 21.28 of the Act as to whether they are in any of the situations set out in sections 21.26 to 21.28 of the Act; and

(6) the nature of the activities of the enterprise.

3. An application for authorization must also indicate, as the case may be, the following information related to the call for tenders for which an enterprise wishes to obtain a public contract or subcontract:

- (1) the number of the call for tenders;
- (2) the deadline for submitting bids;
- (3) the estimated value of the contract or subcontract.

4. The application for authorization must be filed together with

(1) an organization chart outlining the structure of the enterprise and including the names of its subsidiaries and parent company and any subsidiaries thereof;

(2) in the case of an enterprise that has an establishment in Québec, the certificate from Revenu Québec referred to in subparagraph 1 of the first paragraph of section 21.24 of the Act and, in other cases, a document equivalent to the certificate, issued by the local authorities, including the Government or a government department or body;

(3) the financial statements for the latest fiscal year of the enterprise along with at least a review engagement report or, if they cannot be provided when the application is filed due to the date of constitution or amalgamation of the enterprise, an opening balance sheet and supporting documents;

(4) a list of the financial institutions with which the enterprise conducts business;

(5) a list containing the name, date of birth, if applicable, domiciliary address and telephone number of each if its lenders, other than those referred to in paragraph 4, along with the documents evidencing the loans;

(6) in the case of an enterprise that is not a reporting issuer within the meaning of the Securities Act (chapter V-1.1), the names and addresses of the enterprise's shareholders, the number of shares held by each shareholder and the date and details of their issuing and transfer in the past 5 years; and

(7) in the case of an enterprise that has an establishment in Québec, the natural persons referred to in sections 21.26 and 21.28 of the Act must provide the documents listed in subparagraphs 1 to 3 of the first paragraph of section 5 where they are not domiciled in Québec.

5. In the case of an enterprise that is not constituted under the laws of Québec and does not have its head office or an establishment in Québec where it primarily conducts its activities, the application for authorization filed by the enterprise must also contain

(1) a written consent to communicate with any police force or local source of information;

(2) a written consent to communicate with the local fiscal authorities;

(3) a certificate attesting to the absence of a criminal record or, failing that, a list of the criminal records of the natural persons referred to in sections 21.26 and 21.28 of the Act, issued by the local authorities, including the Government or a government department or body or their mandataries; and

(4) a declaration from the enterprise confirming the absence of a criminal record or a list of the criminal records.

For the purposes of this section, the location of the enterprise referred to in the first paragraph and the persons referred to in subparagraph 3 of that paragraph is the Canadian province or territory or other jurisdiction where the enterprise primarily conducts its activities or, in the case of a natural person, where the person is domiciled.

6. The application must also be filed, for every natural person referred to in sections 21.26 and 21.28 of the Act, together with a copy of photo identification issued by a government or a government department or body and bearing the person's name and date of birth.

DIVISION III **UPDATING OF INFORMATION**

7. The annual update of the documents and information of the authorized enterprise, as prescribed by section 21.40 of the Act, must be performed during the period beginning 45 days before the anniversary date of the issue of the authorization to contract of the enterprise and ending on that date. The enterprise indicates, using the electronic form provided by the Authority, whether the information previously provided is still accurate or if modifications must be made. In addition, the enterprise must file the financial statements referred to in paragraph 4 of section 4 on the first updating following their filing if the enterprise was unable to file them when filing its application for authorization.

Each time an enterprise notifies the Authority that the information previously provided must be modified, pursuant to the first paragraph or as part of the periodical update referred to in section 21.40 of the Act, the enterprise must file the documents evidencing the modifications, if such documents exist.

DIVISION IV **APPLICATION FOR RENEWAL**

8. An enterprise must, as part of an application for the renewal of its authorization to contract, indicate, using the electronic form provided by the Authority, whether the information previously provided is still accurate or if modifications must be made. In the latter case, the enterprise must file together with its application the documents evidencing the modifications, if such documents exist.

The application must also be filed together with

(1) the financial statements for the latest fiscal year of the enterprise along with at least a review engagement report;

(2) in the case of an enterprise that has an establishment in Québec, the certificate from Revenu Québec referred to in subparagraph 1 of the first paragraph of section 21.24 of the Act and, in other cases, a document equivalent to the certificate, issued by the local authorities, including the Government or a government department or body; and

(3) in the case of an enterprise that is not a reporting issuer within the meaning of the Securities Act (chapter V-1.1), the names and addresses of the enterprise's shareholders, the number of shares held by each shareholder and the date and details of their issuing and transfer in the past 5 years.

The documents and information provided for in subparagraphs 1 and 3 of the second paragraph need not be sent to the Authority if they have been sent in the 6 months preceding the deadline for submitting the application for renewal indicated in the second paragraph of section 21.41 of the Act and have not been modified since.

CHAPTER II

APPLICATION FOR EXAMINATION OF INTEGRITY

9. An application for the examination of integrity filed under section 21.5.1 of the Act must contain

(1) the name of the enterprise and its Québec business number assigned by the enterprise registrar, if applicable;

(2) the address and telephone number of the head office of the enterprise;

(3) the name, date of birth, if applicable, domiciliary address and telephone number of the natural person who operates a sole proprietorship, as the case may be, of the officers of the enterprise, its directors or partners, the majority shareholder, along with the percentage of the voting rights attached to the shares held;

(4) the nature of the activities of the enterprise; and

(5) the section and description of the facts that led to the finding of guilty for an offence appearing in Schedule I to the Act, if applicable.

10. The application must be sent electronically using the form provided by the Authority. It must also be sent together with

(1) a copy of the final judgement of conviction with respect to an offence listed in Schedule I to the Act, where applicable; and

(2) a list of the public contracts and subcontracts entered into by the enterprise and that are in process.

CHAPTER III

REGISTERS

DIVISION I

REGISTER OF AUTHORIZED ENTERPRISES

11. The register of authorized enterprises kept in accordance with section 21.45 of the Act must contain, in addition to the information provided for in that section,

(1) the name of the authorized enterprise and its Québec business number assigned by the enterprise registrar, if applicable;

(2) the contact information for the head office of the enterprise; and

(3) the identification number assigned by the Authority.

DIVISION II

REGISTER OF ENTERPRISES INELIGIBLE FOR PUBLIC CONTRACTS

12. Each body listed in Schedule II to the Act must designate, among the members of its staff, those that are authorized to file the information referred to in section 21.7 of the Act to the employees of the Authority designated by its president and chief executive officer.

13. The information referred to in section 21.7 of the Act must be filed electronically using the form provided by the Authority within 10 working days following the date on which the judgement with respect to a conviction related to an offence listed in Schedule I to the Act has become final.

CHAPTER IV

FINAL

14. The annual update of the information that an enterprise carries out in accordance with section 146 of the Act mainly to promote Québec-sourced and responsible procurement by public bodies, to reinforce the integrity regime of enterprises and to increase the powers of the Autorité des marchés publics (2022, chapter 18) replaces the first update that the enterprise should carry out, in the period referred to in section 7 of this Regulation, on the first anniversary of the issue of its authorization to contract that follows 2 June 2023.

15. This Regulation replaces the Regulation of the Autorité des marchés publics under an Act respecting contracting by public bodies (chapter C-65.1, r. 0.1) and the Regulation respecting the register of enterprises ineligible for public contracts (chapter C-65.1, r. 8.1).

16. This Regulation comes into force on 2 June 2023.

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